

COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION

COMISIÓN DE ENERGÍA DE PUERTO RICO
Recibido por: <i>Rafael Sosa</i>
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IN RE: PETITION FOR APPROVAL OF
TRANSITION ORDER FILED BY THE
PREPA REVITALIZATION
CORPORATION

CASE NO.: CEPR-AP-2016-0001

SUBJECT: PETITION FOR
INTERVENTION IN THE APPROVAL
OF TRANSITION ORDER
PROCEEDING

2016 APR 9 PM 4:26

JUNTA REGULADORA
DE ENERGÍA Y SERVICIOS
PÚBLICOS
OFICINA SECRETARÍA

PETITION FOR INTERVENTION

TO THE HONORABLE PUERTO RICO ENERGY COMMISSION:

COMES NOW Decentricity, Inc. (“Decentricity”) and pursuant to Section 5.05 of Regulation No. 8543, known as the “Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings”, Section 3.05 of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedure Act of Puerto Rico,” and the “Resolution and Order” of this Honorable Energy Commission issued on April 12, 2016, petitions for leave to intervene in the Restructuring Order approval proceeding before this Honorable Commission for the following reasons:

I. INTRODUCTION:

On July 7, 2015, the Puerto Rico Electric Power Authority Revitalization Corporation (“Corporation”) filed before this Honorable Commission a petition for the approval of a Restructuring Order (“Petition”) pursuant to Article 6.25(A) of the Energy Transformation and Relief Act, Act No. 57-2014 and the Puerto Rico Electric Power Authority Revitalization Act, Act No. 4-2016. Pursuant to Act No. 57-2014 and Act No. 4-216, this Commission must approve the Restructuring Order proposed by the Corporation and with it the imposition of a transition charge

and adjustment mechanism that will secure the repayment of certain Restructuring Bonds to be issued by the Corporation.

After the filing of the Petition, this Honorable Commission issued a “Resolution and Order” on April 12, 2016, establishing that the Corporation’s Petition was complete for purposes of Article 6.25(A) of Act No. 57-2014 and setting the rules for intervention in this proceeding. As stated in the Resolution and Order, any person or entity wishing to intervene in this proceeding may file a written petition discussing “how the intervention will contribute to the Petition’s evaluation and just determination by the Commission pursuant to the parameters set forth in Act 4-2016.” *See* “Resolution and Order” issued on April 12, 2016.

Decentricity seeks to intervene and participate in this proceeding, as it has a legitimate interest in the proceeding, will contribute to the proper consideration of this matter and will not unduly prolong or delay the proceeding. Decentricity seeks intervention before this Commission as a market participant with substantial experience in financial, energy and regulatory matters that can contribute or assist this Honorable Commission in the process of determining whether the Corporation’s proposal satisfies all the criteria required by law.

II. ARGUMENT:

A. Applicable Legal Standard to Analyze a Petition for Intervention.

Section 5.05 of Regulation No. 8543, “Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings” of this Honorable Commission, provides that any person with a legitimate interest in a case before the Commission may present a duly grounded petition to intervene or participate in said case. The petition to intervene must address each of the following points or factors established in Act No. 170 of the 12 of August of

1988, as amended, known as the Uniform Administrative Procedure Act and its interpretative case law:

- (a) Whether the petitioner's interests may be adversely affected by the adjudicatory procedure.
- (b) Whether there are no other legal means for the petitioner to adequately protect his interests.
- (c) Whether the petitioner's interests are already adequately represented by the parties to the procedure.
- (d) Whether the petitioner's participation may help, within reason, to prepare a more complete record of the procedure.
- (e) Whether the petitioner's participation may extend or delay the procedure excessively.
- (f) Whether the petitioner represents or is the spokesperson of other groups or entities in the community.
- (g) Whether the petitioner can contribute information, expertise, specialized knowledge or technical advice which is otherwise not available in the procedure.

The agency shall apply the above criteria liberally, and may require that additional evidence be submitted to it in order to issue the corresponding determination with regard to the application to intervene.

3 L.P.R.A. § 2155 (Official Translation; emphasis ours)

The petition must also discuss the following matters as provided by the "Resolution and Order" issued by this Honorable Commission on April 12, 2016:

- "(1) The nature and scope of petitioner's interest in the current proceeding and how that interest is relevant to the limited purposes of the statute at issue;
- (2) To the extent known, a summary of the petitioner's legal position in relation to the merits of the case;
- (3) A detailed explanation describing how the intervention will contribute to the Petition's evaluation and to a just determination by the Commission pursuant to the parameters set forth in Act 4-2016. Where the petitioner is a business or other entity, such contribution can be described in terms of petitioner's unique experience or position in an industry; where the petitioner is a person, such contribution can be described in terms of the person's relevant professional and/or academic credentials; and
- (4) A determination of how the petitioner's intervention in the case will not result in repetitive testimony or an unreasonable delay of the proceedings.

See "Resolution and Order" at page 3.

An additional factor that will be taken into consideration is whether “petitioner’s interest is already duly represented by PREPA, the Corporation, CEPPPO [Commonwealth Energy Public Policy Office], ICPO [Independent Consumer Protection Office] or any other intervenor”. Id.

Act No. 170 recognizes that agencies must **liberally** consider the factors or criteria necessary to determine if it will allow the intervention of a person or entity in a proceeding, and its discretion in allowing or denying a petition is strongly linked to the concept of **reasonability**. San Antonio Maritime v. P.R. Cement Co., 153 D.P.R. 374, 392-93 (2001); García v. Asociación, 165 D.P.R. 311 (2005). The mechanism of intervention allows a natural or juridical person that has a “legitimate interest” in an administrative proceeding the right to intervene as a party. JP, Plaza Santa Isabel v. Cordero Badillo, 177 D.P.R. 177 (2009). The term “legitimate interest” must not be confused with the concept of “standing”, since in the context of administrative proceedings the main criteria to be evaluated is whether the person or entity that seeks the intervention possesses an adversary interest in the proceeding. San Antonio Maritime, supra. A petitioner’s interest or “legitimate interest”, as contemplated in Regulation No. 8543 and Act No. 170, can refer to environmental, social and economic interests. San Antonio Maritime, 153 D.P.R. at 392-93. **Puerto Rico’s Supreme Court case law has consistently held that agencies must facilitate the participation of those whose interests may be affected by the actions of the administrative agency.** Comisión Ciudadanos v. G.P. Real Property, 173 D.P.R. 998, 1011 (2008). **In fact, the Supreme Court has recognized that the economic interest of a competitor or a market participant preoccupied by a just and legal competition in the market is a legitimate interest for purposes of a motion to intervene.** San Antonio Maritime, supra, at 395.

B. Decentricity Satisfies the Requirements for Intervention in the Approval of Transition Order Proceeding

Decentricity's petition for intervention satisfies the requirements of Section 5.05 of Regulation No. 8543 and Act No. 170 for intervention. In this proceeding, the Energy Commission must determine whether the proposed Restructuring Order filed by the Corporation meets the standards established in Article 6.52 (a) of Act 57-2014, as amended. To accomplish this task, this Commission must apply the guidelines of Section 6.25(A) (d) of Act 57-2014 and issue a Resolution and Order with the findings and determinations.

Decentricity is a developer of energy projects, who is actively engaged negotiating and designing proposals for power and thermal services to industrial and commercial offtakers in Puerto Rico. Thus, Decentricity has a direct interest in this proceeding as a competitor of PREPA. According to the Puerto Rico legislature, competition to PREPA is in the public interest as it will lead to lower rates to consumers and help preserve jobs and advance the competitiveness of the economy in Puerto Rico. See Preamble of Act 57-2014.

In addition, Decentricity may seek to offer service to PREPA's customers through use of the PREPA system by subscribing to a wheeling service required by Act 73 of 2008, known as the "Economic Incentives Act for the Development of Puerto Rico, and further mandated to this Honorable Commission under Section 6.30 of Act 57-2014."¹ Therefore, the rates, terms and conditions of service offered by PREPA are of considerable interest to Decentricity so as to gain

¹ Article 4 of Act 73-2008 created the "Energy Affairs Administration" and provided for implementation of a wheeling service:

Section 2.—Wheeling.—

(a) It shall be the public policy of the Government of Puerto Rico to establish aggressive strategies to achieve efficiency in the generation, transmission and distribution of electric power, in order to ensure its availability and supply at a competitive cost.

(b) **The Electric Power Authority is hereby directed, within a nondeferrable term which shall expire on January 2, 2010, to identify and implement a system which enables tax-exempt businesses described in Section 2(d)(1)(H) of the "Economic Incentives Act for the Development of Puerto Rico" or similar provisions in preceding incentives laws, to contract the sale of electric power from other entities through the wheeling service.**

(Emphasis ours) The system is yet to be adequately implemented by PREPA.

assurance that they are just and reasonable and not unduly discriminatory and anti-competitive to others who seek to provide electric service to PREPA's customers. While wheeling service is not the principal issue in the instant proceeding, the outcome of this proceeding may impact the rates, terms and conditions of such service. If the transition charge to be imposed on all consumers does not conform to the standards established by law, and consequently does not serve the purpose for which the statute was designed, Decentricity's ability to compete in the marketplace may be adversely affected.

Decentricity seeks to participate in this proceeding and reserve its right to present the company's position with regards to the merits of the Restructuring Order and, if needed, submit testimony to substantiate its position, and assist in the evaluation of the proposed Restructuring Order. The present petition for intervention is necessary for Decentricity to protect its interests. As contemplated by the Legislature in Act 57-2014, the participation of market participants, such as Decentricity, in the proceedings of PREPA is in the public interest:

After more than seventy (70) years of its creation, and more than three decades of having achieved the total electrification of the Island, **PREPA has become a monopoly that regulates itself; sets its own rates without actual oversight;** incurs operational, managerial, and administrative deficiencies whose actual cost, at the end of the day, is borne directly by customers; **and whose governance lacks transparency and citizen participation. All of the above contributes to Puerto Rico being among the top U.S. jurisdictions with the highest energy cost.**

This measure amends the Electric Power Authority Act to clearly express the people's mandate to this public corporation. It does not include amendments that respond to vested interests, but rather it incorporates substantive amendments that set forth the legal framework to enable PREPA to become the public entity responsible for supplying electric power at the lowest possible cost, observing the highest environmental standards, and in support of the socio-economic development.

(emphasis added) After approval of the Restructuring Order, the only mechanism to challenge the merits of the Order will be by way of a judicial review under the arbitrary and capricious standard.

If Decentricity wants its position to be actually taken into account, and possibly incorporated into this Honorable Commission's assessment of the proposed order, intervention in this proceeding is the only alternative.

This Honorable Commission must also note that, as a competitor of PREPA, Decentricity's commercial interests are unique and are not able to be adequately represented by any other party. Decentricity's interests are not represented by PREPA, the Corporation, the Commonwealth Energy Public Policy Office ("CEPPO"), the Independent Consumer Protection Office ("ICPO"), nor any other known or potential intervenor. As a competitor in the power service industry and as a potential customer of wheeling service supplied by PREPA, Decentricity's interests are unique.

For the reasons discussed above, Decentricity has a right to intervene in this proceeding as established by Act 170-1988 and the interpretative case law of the Supreme Court of Puerto Rico. The transition charge to be approved in this proceeding by this Honorable Commission will affect Decentricity's business and position in the market, and thus Decentricity should be allowed to participate as a party in this proceeding.

C. Petitioner's Legal Position in Relation to the Merits of the Case and Contribution to the Petition's Evaluation

Because of the length and complexity of the Corporation's Petition and proposed Restructuring Order, Decentricity is still in the process of evaluating the reasonableness of the proposal and its competitive impact. Decentricity reserves its rights to comment on the Petition at a later date in accordance with the procedural schedule established by the Commission.

D. Decentricity Will Not Unduly Delay the Proceeding

Decentricity is filing this petition for intervention within the deadline ordered by this Commission and will work accordingly to meet any other deadline set in this proceeding. In the

event that Decentricity offers testimony we are willing to attempt to coordinate with other parties to avoid duplication and unreasonable delay. Granting Decentricity's intervention will further the interests of justice and the orderly and prompt resolution of this proceeding.

III. CONCLUSION

In applying the guides or factors of Section 5.05 of Regulation No. 8543, Act 170-1988 and the interpretative case law of the Supreme Court to the Petition for Intervention of Decentricity, this Honorable Commission must conclude that: (1) Decentricity has a legitimate interest in participating in this proceeding; (2) the intervention is necessary to protect Decentricity's interests which will not be properly addressed by any other party in this proceeding, if Decentricity is not allowed to intervene; (3) Decentricity can provide expert knowledge and, therefore, contribute to the proper and complete evaluation of the proposed Restructuring Order; and; (4) Decentricity's intervention will not unduly extend or delay the proceeding.

WHEREFORE, Decentricity requests from this Honorable Commission to grant its petition to intervene, thus allowing it to become a party to the approval of transition order proceeding, and granting Decentricity the right to participate in the proceeding with full rights as a party in accordance with this Commission's orders and deadlines.

RESPECTFULLY SUBMITTED.

WHEREBY CERTIFY that on this same date we notified a true and exact copy of this petition to:

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In San Juan, Puerto Rico, this 19th day of April, 2016.

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